

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel L. Spuck, :
Appellant :
v. :
Centre County, Pennsylvania, and :
Deny Nau, Official and individual : No. 1077 C.D. 2011
capacity : Submitted: September 23, 2011

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: October 18, 2011

Daniel L. Spuck (Spuck) appeals *pro se* from an order of the Court of Common Pleas of Centre County (trial court) sustaining Defendants' Centre County Sheriff Deny Nau (Nau) and Centre County (Defendants) preliminary objections in the nature of a demurrer. Finding no error in the trial court's decision, we affirm.

Spuck is currently incarcerated at the State Regional Correctional Facility at Mercer. On July 16, 2007, Spuck filed in the Mercer County Court of Common Pleas a civil complaint against Centre County and Centre County Sheriff Deny Nau (Sheriff Nau), as well as three other individuals, Centre, Clearfield and Clinton Counties, and the Commonwealth (Defendants) regarding Spuck's contention that Sheriff Nau only served one out of 12 defendants in his previous civil case and, as a result, the pre-trial conference was postponed and never rescheduled. Sheriff Nau filed preliminary objections alleging, among other

things, lack of proper venue. Spuck filed an answer to the preliminary objections arguing that they should be struck because Sheriff Nau's counsel failed to sign and date them. On November 14, 2007, the Mercer County Court of Common Pleas granted the preliminary objections regarding venue and transferred the case to Centre County because Sheriff Nau was an employee of the Centre County Sheriff's Department and the cause of action arose there. Spuck appealed, and this Court affirmed the decision of the trial court. *See Spuck v. Nau* (No. 359 C.D. 2008, filed July 25, 2008).

On January 27, 2010, Defendants filed motions to consider preliminary objections following appeal for the remaining preliminary objections which contended that Spuck had not set forth a cause of action. Among other reasons, Spuck contended that the preliminary objections should not be considered because they were not properly verified.¹

On March 3, 2011, the trial court sustained Defendants' preliminary objections. The trial court opined that Spuck failed to state a recognized cause of action because he provided no factual or legal ground that would establish a basis for recovery. The trial court further stated that Spuck may not file an amended complaint because there was no reasonable possibility that an amended complaint would be successful. The trial court finally noted that this is "the latest in a line of civil suits pursued by [Spuck]," Trial Court Opinion, dated March 3, 2011, at 5, all of which have been dismissed or disposed of against Spuck. Spuck subsequently

¹ Spuck filed a notice of appeal on February 25, 2010, which the Superior Court quashed as an impermissible interlocutory appeal.

filed a motion for reconsideration which was denied on March 25, 2011. He then filed a notice of appeal on April 7, 2011.

On appeal, Spuck alleges that the trial court erred in granting Defendants' preliminary objections and in denying his petition for reconsideration. More specifically, he argues that Sheriff Nau's preliminary objections were incomplete because they were not signed and that venue was proper. When we addressed Spuck's initial appeal, we addressed this exact issue stating:

Spuck first contends that the trial court erred in granting the preliminary objections regarding venue because Sheriff Nau failed to sign and date the preliminary objections as required under Pa. R.C.P. Nos. 76² and 1024. Pa. R.C.P. No. 1024(a) provides the following:

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder.

Sheriff Nau argues that Pa. R.C.P. No. 1024 only requires that a pleading be verified when factual averments are being asserted in support of a particular claim or position, and, in this case, Spuck "made no factual contentions other than to refer to the inadequate

² Pa. R.C.P. No. 76 defines "verified" as follows: "when used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities."

factual predicate alleged by Mr. Spuck in his own pleading.” (Sheriff Nau's brief at 2.) Sheriff Nau further argues that because his “preliminary objection to venue was not dependent upon a specific factual rationale outside what was pled in the complaint and considering the fact that this particular venue issue involves strictly a legal point, no verification was required.” (Sheriff Nau's brief at 3.) We agree.

Spuck's complaint alleged the following with regard to Sheriff Nau:

Denny Nau was an employee of the Centre County, Pa. Sheriff's Department and was Ordered by the Centre County Judge Brown to service the Defendants in Civil Case No. 2003-1383, however he only serviced 1 out of 12 defendants.

The Plaintiff, Daniel L. Spuck's Civil Matter was scheduled for a Pre-Trial Conference on September 16, 2004, at 10:30 am., however due to the negligence and failure to comply with the Honorable Courts Order, Mr. Deny [sic] obstructed, and impeded the Plaintiff's Civil Case, and forced the Honorable Judge Brown to Postpone the Pre-Trial conference, in which was never rescheduled, Mr. Deny [sic] actions also contributed to the dismissal of his Civil Action on July 6, 2005, and July 27, 2005 (Reconsideration).

The rest of the complaint identifies the other defendants and their misdeeds and then goes on to aver that as a result of all of the defendants' actions, Spuck suffered a loss of income of over \$5,000,000 due to their negligence, defamation of his character, the dismissal of his civil case, and the obstruction and impediment of his appeals. The preliminary objections of Sheriff Nau are specifically directed to lack of service, lack of proper venue in Mercer County, and failure to state a cause of action. They do not contain an averment or denial of fact not appearing of record in the action. See *Milford Traumbauersville Area Sewer Authority v. Approximately 0.753 Acres of Land*, 358 A.2d 450 (Pa. Cmwlth. 1976).

Consequently, the trial court did not abuse its discretion by granting the preliminary objections despite the lack of verification. [Footnote omitted].

Spuck argues next that Sheriff Nau's preliminary objections regarding venue should not have been granted because the "cause of action" arose in Mercer County. The cause of action he refers to is that Sheriff Nau was supposed to serve all of the defendants in this matter, but only served one defendant causing an impediment and obstruction of the civil matter.

Pa. R.C.P. No. 2103(b) provides that an action against a political subdivision may only be brought in the county in which the political subdivision is located. A "political subdivision" is defined at Pa. R.C.P. No. 76 as "any county, city, borough, incorporated town, township, school district, vocational school district, county institution district or municipal or local authority." This means that Spuck was required to bring his action against Centre County in Centre County, including an action against any employees of Centre County who were acting as its agents, i.e., Sheriff Nau.^[3]

Spuck v. Nau (No. 359 C.D. 2008, filed July 25, 2008).^[4]

This court has previously determined that Sheriff Nau's preliminary objections were proper because verification was not required and venue was proper in Centre County. Accordingly, the "law of the case" doctrine applies. Under the "law of the case," a court will not reopen issues decided by the same court in

³ Spuck also argues that venue should have remained in Mercer County because he was a resident of Mercer County when he received a letter from the trial court stating that his pre-trial conference was not held because Sheriff Nau was not served with the praecipe for writ. This argument also provides no explanation why venue should not be transferred to Centre County.

⁴ Spuck also raises a constitutional challenge to Pennsylvania's Governmental Immunity Act, 42 Pa. C.S. §8541-42. Because this was not raised in his 1925(b) statement of errors complained of on appeal, the issue is waived. Pa. R.A.P. 1925(b)(4).

another phase of the matter. *Amtrak v. Fowler*, 788 A.2d 1053 (Pa. Cmwlth. 2001). “Law of the case means that whatever is once irrevocably established as the controlling legal rule of the decision between the same parties in the same case continues to be the law of the case.” *In re Pennsylvania Turnpike Commission*, 715 A.2d 1219, 1223 n.10 (Pa. Cmwlth. 1998) (citations omitted).

Because the issues Spuck raises have been previously ruled upon by this Court in an earlier phase of this case, the trial court did not abuse its discretion in denying his petition for reconsideration. Accordingly, the order of the trial court is affirmed.

DAN PELLEGRINI, JUDGE

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel L. Spuck, :
Appellant :
v. :
Centre County, Pennsylvania, and :
Deny Nau, Official and individual :
capacity :
: No. 1077 C.D. 2011

ORDER

AND NOW, this 18th day of October, 2011, the order of the Court of
Common Pleas of Centre County, dated March 25, 2011, is affirmed.

DAN PELLEGRINI, JUDGE